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THE COVID-19 OUTBREAK – HUNGARIAN DATA PROTECTION ASPECTS

The measures taken to stop COVID-19 (i.e. the disease caused by the SARS-CoV-2 coronavirus) spreading and to mitigate its detrimental effects raise several data protection questions. With respect to the current situation, many employers are facing very complex challenges each day. The below data protection related legal requirements and guidelines help ensure compliance when taking measures with regard to the coronavirus.

I. DATA PROTECTION

A) PRINCIPLES

The employers are considered data controllers with regard to employer measures taken to contain the spread of coronavirus and mitigate its negative effects (certainly excluding any examination conducted by health professionals). Therefore the employers are mainly responsible for the compliance with the applicable laws (in particular but not limited to the provisions of the general data protection regulation (***GDPR***).

The employers shall always take the general data protection principles (see Art. 5 GDPR) – in particular the principle of accountability – into account when elaborating any of the respective measures. Before implementing any measure, the employers must carry out a detailed assessment whether the purpose of the respective certain measure may be achieved without processing any personal data. Personal data may only be processed if and to the extent the purpose of the data processing may not be reached by any other means.

As regards the measures taken in connection with COVID-19, the following, less intrusive alternative solutions shall be taken into consideration: implementing basic hygiene measures; extensive cleaning of office equipment; providing disinfectant and require its frequent use; postponing all client meetings and organizing video conferences instead.

B) FIRST STEPS

According to Act I of 2012 on the Labour Code (***Labour Code***) the responsibility for the implementation of occupational safety and occupational health requirements lies with the employers. In this context the employers shall plan, implement and regulate the respective data processing activities.

Based on the recent guideline issued by the National Data Protection and Freedom of Information Authority (***NAIH***) [1] the following measures may be expected from the employers:

(i) **pandemic / business continuity action plan,** which includes the proposed preventive steps, measures to be taken in case of contagion, the respective data protection risks, the responsibilities as well as the communication channel used to provide information;

(ii) **detailed information,** which includes the most important things to know (i.e. source of the virus, its spread, incubation period, symptoms, prevention) and the contact person the employees may turn to;

(iii) **restructuring plan** (if necessary), **home-office policy**;

[1] https://www.naih.hu/files/NAIH_2020_2586.pdf

(iv) **procedure** according to which the employees shall immediately notify the responsible person and/or turn to a doctor if the conditions set out in the relevant information are met.

C) PANDEMIC / BUSINESS CONTINUITY ACTION PLAN

As part of the pandemic / business continuity action plan, an internal group should also be set up, in which each member has different responsibilities. Ideally, the management as well as the communication / marketing team and the HR / labour safety team are also part of such internal group.

The group is typically responsible for (i) the elaboration and implementation of the measures and the action plan mitigating the risks to the company as well as its employees (i.e. hygiene measures, measures necessary to the monitor the contagion, controlling and informing the persons / guests visiting the company's premises, elaborating as well as publishing the action plan by means considered customary and commonly known); (ii) continuous coordination (which may certainly be carried out by electronic means); (iii) continuous monitoring of the updates regarding the COVID-19; (iv) managing internal (shareholders as well as employees) and external (clients, partners, etc.) communication; (v) issuing status reports; (vi) continuous update of the action plan; (vii) ensuring the continuity of the business (elaborating a plan with regard to the substitution of the managers). Regular and proactive communication is recommended, furthermore the continuous process of feedbacks as well as their implementation in the action plan are considered as good practice.

D) INFORMATION ON THE EMPLOYEE MONITORING

The privacy notices prepared for the employees as well as other persons (partners, visitors, clients, etc.) shall contain the necessary elements set forth by the GDPR. Thus, in particular the followings shall be included in the respective privacy notice:

(i) the purpose of the employee monitoring as well as any other measures implemented to contain the spread of COVID-19;

(ii) the legal basis of the data processing related to the above monitoring / measures (see Section I. F);

(iii) in case the data processing is based on the legitimate interest of the employer, such legitimate interest shall be indicated in the privacy notice;

(iv) in case the employer engages third persons to carry out monitoring and other measures, such third persons (so called recipients) shall be named in the privacy policy;

(v) the retention period of the personal data collected during monitoring and other measures;

(vi) rights which the employees and other data subjects are entitled to (see Section I. H); and

(vii) the right to lodge a complaint with a supervisory authority in case the employees or any other data subjects consider that the processing of personal data infringes the applicable laws.

It is of note that the employees shall be provided with the respective privacy notice prior to the data processing. Furthermore the privacy notice shall use clear and plain language, and give a transparent overview of the data processing.

E) PERSONAL DATA COLLECTED WITH REGARD TO THE MONITORING OF THE CONTAGION

If the employee reports or the employer becomes aware of any suspicious circumstance based on the information provided by the employee, the employer may record the below data:

(i) date/time of report;

(ii) data necessary to identify the affected employee;

(iii) the fact that the employee has been to a country / territory within the period of time as indicated on the list;

(iv) data regarding the fact that the employee has contacted any person coming from a country / territory indicated on list; and

(v) measures taken by the employer.

The employers may require the employees to fill out a questionnaire, if

(i) it is considered necessary and proportionate based on a pre-assessment, and

(ii) the questionnaire does not request any information about the employee's medical history and medical documentation.

With respect to the above, the employers should not require information regarding the employee's medical status as well as any possible symptoms.

It is recommended keeping the list of countries / territories indicated in the information up-to-date in order to achieve the purpose of the data processing. Providing the employees with the useful website links related to the COVID-19 may as well be considered as a good practice.

According to the above referred guideline issued by NAIH, the employers are not permitted to generally and systematically require employees to undergo medical checks (such as measuring body temperature), as such data are not capable of filtering out the contagion and medical checks shall be conducted or supervised by medical professionals.

With respect to special positions, in case the employers consider it strictly necessary based on the employee's report, the assessment of the circumstances or the risk assessment, the employers may order medical examinations to be carried by medical professionals. In such cases the employers may only learn the outcome of the examination, which means that – similar to the occupational health aptitude tests - the details of the examination shall not be disclosed to the employers.

Please find the current changes with regard to the health related employer measures in Section J) below.

F) LEGAL BASIS OF THE DATA PROCESSING

The legal basis on which personal data are processed is a significant aspect of the lawful data processing. The employers may only process personal data based on one of the legal bases set out by the GDPR. Thus, it is important to find a legal basis (e.g. legitimate interest of the employer, or the fulfilment of legal obligations) before the processing, otherwise the data may not be processed lawfully.

In line with the referred guideline of NAIH, data processing related to the above measures may primarily be based on the legitimate interest of the employer (Art. 6 (1) f) GDPR), provided that the interests and fundamental rights and freedoms of the data subjects (employees) are not overridden by the legitimate interest of the data controller (employer).

Before implementing any coronavirus related measures, the employers shall consider the whole data processing in detail, and afterwards carry out a balancing test, which grounds the employer's legitimate interest. Data processing based on legitimate interest may only be lawful, if the data controller has previously carried out a balancing test, which outcome justifies that the employer's legitimate interest overrides the possible negative impacts of the data processing affecting the employees. In accordance with the Opinion No. 6/2014 of the Article 29 Working Party, the following steps should be taken in the balancing test:

(i) considering any other potential legal basis of the processing;

(ii) assessing the lawfulness of the employer's legitimate interest;

(iii) establishing if the processing of personal data is actually necessary to reach the respective purpose, or there is any alternative, less intrusive means;

(iv) the method of providing the balance between the legitimate interest of the data controller and the protection of the data subjects;

(v) describing the final balance between the interests of the parties, taking the safeguards into account that may be applicable to protect the interests of the data subjects;

(vi) demonstrating compliance and ensuring transparency (by way of informing the data subjects, and with respect to the principle of accountability, providing information to the competent authorities if necessary).

In line with the order No. 2016/1684/2/V issued by NAIH, the above six steps may be summarized by a three section process: "*The balancing test is actually a three step process, in which the legitimate interest of the data controller and data subjects, as well as the affected fundamental right shall be defined, and finally, after carrying out the balancing, it shall be established whether the personal data may be processed or not.*"

Based on the "super principle" of the GDPR, i.e. the principle of accountability, the balancing test shall adequately be documented and the legitimate interest shall be indicated in the respective privacy notice.

It is also of note that Article 9 GDPR must as well be taken into account when processing health data. The legal basis of the processing of health related data will likely be Article 9 (2) b) GDPR as the employer is responsible for the implementation of occupational safety and occupational health.

As mentioned above, the legal basis of the data processing must be indicated in the privacy notice. Additional legal requirements (e.g. data protection impact assessment) may as well apply to the data processing related to the measures taken in order to restrict the spread of coronavirus depending on the categories and quantity of the processed data. Based on the list of mandatory data protection impact assessments issued by the NAIH, the employers are likely not obliged to carry out such impact assessments before implementing the respective measures to contain the spread of COVID-19 and mitigate the risks, provided that such measures do not include the processing of a great number of health data.

G) RETENTION PERIOD

It is a frequently asked question how long the employer may store the personal data collected during the examination / measures. According to one of the principles of the GDPR, personal data may not be processed for longer than it is necessary for the purpose of the processing (storage limitation). With respect to the incubation period of the coronavirus, in most cases personal data collected in connection with the employer measures may only be stored for a couple months. Afterwards personal data shall be erased.

H) OTHER OBLIGATIONS

INFORMATION: As a general rule, the employers shall inform their employees about the requirements set out by Article 13 GDPR. In this context, the general employee privacy notices should be completed with regard to the respective data processing or a separate privacy notice shall be prepared concerning the above measures.

DATA SUBJECTS RIGHTS: The employers shall ensure that the employees (data subjects) may exercise their below data protection rights in connection with the above measures as set forth by the GDPR.

(i) the employees may access their personal data (e.g. their statements) as well as other information related to the processing;

(ii) the employees have the right to request the erasure of their personal data, in case e.g. such data are not necessary anymore, or the data processing infringes the applicable laws;

(iii) the employees may request the restriction of data processing. In that case the employers may not carry out any processing activity other than the storage of data;

(iv) in case of inaccurate or incomplete personal data, the employees may request the rectification of their personal data;

(v) the employees are entitled to object to the processing (e.g. to refuse making a statement with regard to his or her previous travels). In that case the employers may only continue the processing of the affected employee's personal data, if the employer demonstrates compelling legitimate grounds for the processing which overrides the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims. The employees may exercise their right to object in writing or orally, however the employers shall make the necessary steps related to the data subject request without undue delay but no later than one month.

DATA SECURITY: Data security and confidentiality shall always be adequately ensured throughout the whole data processing. However, it is hard to define in the practice whether a security measure may be considered adequate. The below measures shall be taken into account when carrying out the above monitoring / measures:

(i) Elaborating an internal policy regarding the execution of the monitoring / respective measures (i.e. the collection of personal data), which should include the categories of data that may be processed, the purpose of the data collection as well as the respective retention period;

(ii) Regulating access rights. It is important that personal data may only be available for the entitled persons;

(iii) Pseudonymisation. It is necessary for the safe data storage, which may have significant relevance in case of data transfers through portable devices or public networks;

(iv) Data breach management. A data breach may occur at any time, therefore it is recommended having an internal data breach management policy as well as a procedure in order to respond to any breach within a short period of time, as the maximum administrative fine that may be imposed is very high (10 000 000 EUR or 2% of the total worldwide annual turnover of the company).

The employers may disclose the identity of the employees affected by the reports / monitoring to third persons only in special circumstances. The employers are entitled to inform the other employees about the contagion, the employers however, are not entitled to name such affected persons.

DOCUMENTATION: To comply with the principle of accountability and to be able to keep track of all measures, it is important to document each and every decision, which requires data processing.

Please note that the data processing related to the monitoring / measures shall adequately be documented in the record of the processing activities, furthermore the privacy notices should be published by means considered customary, which should also be documented in writing.

DATA TRANSFERS: The employers may only transfer personal data collected during monitoring / the respective measures to third persons (such as authorities), in case the transfer has an adequate legal bases (e.g. the data transfer is necessary for the legitimate interest of the employer, or the data transfer is set out by a legal obligation or a binding order of an authority). It is recommended that the employers always make sure that data are transferred to the competent authorities and such authority is actually entitled for the processing.

Based on the recent governmental regulation, the minister responsible for innovation and technology may learn and process any available data in order to contain the spread of the disease, mitigate its consequences, protect the health and life of the Hungarian citizens, as well as to analyse the disease.[2]

Additionally it is also of note that governmental and municipal authorities, companies as well as natural persons shall provide support and transfer any requested data to the minister responsible for innovation and technology.[3]

[2] Section 10 (1) of the Government regulation No. 46/2020. (III. 16.)
[3] Section 10 (2) of the Government regulation No. 46/2020. (III. 16.)

EDUCATION OF THE EMPLOYEES: It may be considered as good practice to raise the employees' data protection awareness furthermore to educate them with regard to the disclosure and confidentiality of personal data. In order to avoid any unauthorized access to personal data, it is recommended informing the employees not to disclose any of their personal data, unless the employee made sure that the data recipient is entitled to receive such personal data and confirmed his or her identity.

OUTSOURCING: In case the employers would like to engage third parties to carry out the monitoring measures, the employers shall check the GDPR-compliance of such third parties before engaging them. Furthermore, data processing / data controlling agreements should also be executed, depending on whether the engaged third party acts as a processor or a controller. In case of data processing agreements, Article 28 GDPR shall always be taken into account.

I) DATA PROCESSING RELATED TO PERSONS OTHER THAN EMPLOYEES (E.G. VISITORS)

The employers may implement measures to contain the spread of COVID-19 and to mitigate the potential risks with respect to third persons (e.g. visitors, clients) as well. In that case the employers should also prepare an action plan, the relevant privacy notice as well as information. The entrance to the premises of the employer may be banned by the action plan.

J) UPDATE BASED ON THE GOVERNMENT REGULATION NO. 47/2020. (III. 18.)

In accordance with the Government regulation No. 47/2020. (III. 18.) coming recently into force, the employers may take measures necessary and justified to check the health status of the employees. Neither the Government regulation nor other regulation contains any detailed provision regarding measures that may be considered as necessary and justified in this context. Therefore the employers' discretion based on the employers' prior risk assessments, the applicable internal policies as well as procedures could help determine measures, which may be qualified as necessary and justified in line with the Government regulation. However, the measures may differ in each case based on the circumstances. It is also of note that in order to comply with the data protection laws, the necessity, proportionality as well as the adequacy of the data processing with respect to its purpose shall be described in detail in the risk assessment.

At the same time, please note that the above referred Government regulation does not comply with Section 9 (2) h) GDPR regarding the processing of health data, thus it may not clearly be considered lawful if the employers send their employees home / refuse their entry to the employers' premises / make labour law related decisions based on the measured body temperatures as well as the results of such measures.

K) UPDATE REGARDING THE MEASUREMENT OF BODY TEMPERATURE (AND OTHER EXAMINATIONS) AT THE WORKPLACE

Guidelines No. 2020/3649 issued by NAIH confirmed, that with respect to the current epidemiological situation it is considered a disproportionate employer measure to require any examination to be carried out with a diagnostic device (such as the measurement of body temperature or the performance of any test) generally involving all employees, in light of the fact that health care professionals and authorities are entitled to collect and evaluate information related to the symptoms of the coronavirus and also to draw conclusions therefrom.

However, some positions could be significantly affected by the exposure to the disease, thus with regard to these affected positions the employer may consider it indispensably necessary to have such examinations (tests) carried out by health care professionals or under their professional responsibility. The employer may only be informed about the results of the examinations.

In case it is indispensably necessary to carry out the examinations concerning certain positions (which must be based on a risk assessment), personal data may be processed based on the legitimate interest of the controller (which is adequately documented by a balancing test) and on Art. 6 (1) f) GDPR) and Art. 9 (2) h) GDPR, taking also into account that the necessity of the processing of health data should be set out in the EU / national law or a contract concluded with a health care professional.

Furthermore, the data protection principles should also be taken into consideration, thus all personal data processed during the required examinations should be adequate, relevant and necessary regarding the purpose of the data processing.

L) RESTRICTION OF THE DATA SUBJECTS' RIGHT BASED ON THE GOVERNMENT REGULATION NO. 179/2020. (V. 4.)

On 4 May, 2020, the Hungarian Government issued a regulation (179/2020. (V. 4.) Government regulation) (***Regulation***) regarding the restriction of data subjects' access rights and access to public information.

The Regulation provides that during the current state of emergency, data subjects' rights (Chapter III GDPR) related to data processing activities carried out with the purpose of prevention, study, detection etc. of the Coronavirus disease (COVID 19) shall be restricted. All measures to be taken in case of a data subject requests (such as a request for access or deletion) must be suspended until the end of the state of emergency. The deadlines applicable to such requests will commence the day after the current emergency situation ends (which date is currently unpredictable). Furthermore, the data subjects should be informed on the aforementioned restriction without undue delay after the state of emergency ends, but no later than 90 days after the receipt of the request.

The Regulation also relaxes notification obligations: the requirements set out in Art. 13-14 GDPR concerning data processing performed with the above purposes must be considered fulfilled in case a general privacy notice containing information on the purpose, legal basis as well as the extent of the processing is made available online.

The potential reason behind this restriction is to relax the administrative burden on the health care providers, which are currently being extremely overwhelmed with work. However, as the Regulation does not define the controllers falling under its scope, any business/employer carrying out data processing activities with the above purposes (such as the processing of travel data of the employees, their body temperature to contain the spread of Coronavirus at the workplace, etc.) must comply with the above restrictions, which also means that business should consider adjusting their respective internal policies and procedures accordingly.

II. LABOUR LAW

With regard to the obligations of the employer, it shall especially be emphasized that the Labour Code provides as a general obligation that the employer is responsible for establishing the conditions for occupational safety and occupational health. Please find below some of the typical issues which, as a result of the pandemic situation, may lead changes in the life of all employers operating in Hungary.

A) QUARANTINE / EPIDEMIC ISOLATION

In many aspects, this is the most obvious situation which we may come across during an epidemic. The quarantine is actually a measure of an authority, which typically means isolation ordered for the reason of public health. According to Section 11 (2) of Government Decree No. 102/1995. (VIII. 25.) if the incapacity is the result of such public health reason, the Chief Public Health Officer, who ordered the measures, notifies the medic who is responsible for the registration of the incapable status. Such medic registers the insured person, and certifies his incapacity. Thus, in the time spent in quarantine, the employees who are unable to work for the said reason, are granted sick pay. There is no requirement for them to be actually ill, they only need to stay in the isolated area, as it is sufficient to fall under the scope of the quarantine, which restricts free movement.

B) HOME OFFICE

In case an epidemic measure has not been ordered by an authority yet, but the employer intends to make a precaution measure, the ordering of working from home, i.e. “home office” may be an obvious solution. Naturally, it is only an opportunity in specific cases and for specific work positions, which could be performed from home, with the use of IT devices (computer, internet connection).The costs occurring in relation to being in home office are born by the employer, and wages shall be paid as normal.

It shall be emphasized that the home office does not classify as remote work because of its temporary and extraordinary nature, but it may be a question that, in case of employees who normally never work from home, under what conditions could it be ordered by the employer. Two further circumstances shall be taken into account besides the above material conditions mentioned and the question of bearing the costs.

(i) In these cases the parties’ mutual agreement may prove to be the legal basis for working from home. Thus, if someone rejects the opportunity to work from home by referring that his living circumstances or personal circumstances do make it possible, he should not be ordered to work from home.

(ii) If the employee does not agree to work from home for another reason, it could be ordered in principle for the maximum of 44 working days per year in accordance with the provisions of derogation from the employment contract. However, it shall not be disregarded that the employer is obliged by the Labour Safety Act to carry out a risk assessment with regards to the place of work, which obligation is also applicable for home office. It is doubtful how employers could fulfil this obligation in a short time, in relation to a higher amount of employees. In case an employee does not consent to the risk assessment as he does not intend to work from home, the option of working from home excluded by default. In these cases the employer shall individually consider his options against this kind of employee.

C) ALLOCATION OF VACATION TIME

According the Labour Code, the employer has the right to allocate vacation time. Thus, in the present epidemic situation, the vacation may be allocated as a preventive measure, as an individual decision of the employer. In this regard, the following restrictions shall be taken into account.

The employer is obliged to allocate vacation time of 7 working days, in maximum two parts, which shall be allocated to the dates it was requested for by the employee. The vacation shall be allocated in a way which means

that the employee is exempted for 14 contiguous days from his obligation of working and being available. The employee shall inform the employer about the date of the start of the vacation time minimum 15 days in advance.

D) FOREIGN TRAVELS AND WORKING

In this regard, official and private travels shall be handled separately. Regarding official travels, the aforementioned principle shall fully apply, according to which the employer is responsible the implementation of occupational safety and occupational health requirements. In the present matter it generally means that the employer shall not instruct the employee to travel to a geographic area where epidemic measures are in force, or where the conditions for work safety cannot be guaranteed. The employee is entitled to reject the instruction of the employer in case acting accordingly would directly and severely threaten the life, physical integrity or health of the employee[4]. It is very important that the employee shall make himself available for work despite the rejection of the instruction, therefore he is obliged to perform his usual work upon any – lawful – other instruction.

The situation is different in case of private travels during vacation. It is a general rule that the private life of the employees shall not be checked. Meanwhile, the protection of the integrity of private life shall not collide with the principle that the employer is obliged to provide conditions for working healthy and safely in relation to all of his employees. In this case, to be a careful employer, preliminary information could surely be requested from the employees regarding their travel destinations to check whether any of them travels to an infected area. The employee shall answer this question because of his obligation to cooperate as set out in the Labour Code. It may be advised to implement and publish a general rules of procedure, in which the employer could inform his employees about situations which are regarded risky and about the concerning measures which the employer orders.

Our view is that in this protocol the workers could be called upon to spend the next two weeks at home after their arrival from an area where he could with a high possibility have been in contact with the virus. Our view is that in this extraordinary case it is not excluded to request a certificate about being able to work from the returning employee. If the general practitioner declares that the returning employee is incapable, his or her absence will be certified and will be subject to sick leave and sick pay. If the general practitioner finds that the employee is able to work, he or she shall be employed. If this can be resolved by working from home, it is the easiest compromise from both parties. If this cannot happen because of the lack of physical conditions, the paid vacation could be allocated. In case neither option could be applied, but the employer because of safety reasons does not intend to let the given employee to be present at the workplace, as a general rule downtime may be ordered, with wages to be paid for the downtime. Deviation from this may only be allowed with a view to all circumstances of the case and the faulty, possibly expressly malicious conduct of the employee.

E) MEASURES IN STATE OF EMERGENCY

Currently, there has been no quarantine ordered by the authorities[5], however the government has declared the state of emergency in the government regulation No. 41/2020. (III. 11.). The emergency measures are continuously changing. As a recent update, the government has shut down certain administrative bodies, ordered a legislative break and closed the educational institutions for an uncertain period of time.[6]

Many parents will have no choice but to stay home as the education will take place outside of the classrooms, through digital means and many kindergartens in municipal competence have also been closed. Certainly, the above mentioned possibilities (leave, home office) may be applicable in this case as well, but if not, the employee may be exempted from work duty in line with Section 55 (1) j) of the Labour Code. According to the referred Section the employee is exempted from work duty by law for the duration of absence due to personal or family reasons deserving special consideration, or as justified by unavoidable external reasons. Which means that such absence shall be considered justified, however the employee is not entitled for remuneration. It also means that

[4] Section 54 (2) Labour Code

[5] As of 15 March 2020

[6] „About the new work schedules in the educational institutions regarding the coronavirus" – Government decree No. 1102/2020

the employers may not lawfully terminate the employment based solely on the reason that the employee did not show up for work.

F) UPDATE BASED ON GOVERNMENT REGULATION NO. 47/2020. (III. 18.)

On 18 March 2020, the Hungarian Government published a regulation containing also labour law related provisions. As it is typical for the legislation during state of emergency, the provisions of the Government regulation, which affect, temporarily amend or repeal certain sections of the Labour Code are very brief. According to the Government, detailed provisions will be delivered by further Government regulations.

1. As regards the economic entities providing services related to tourism, hotels and restaurants, entertainment, gambling, movies, performances, events and sports, in March, April, May, June 2020 the employer
   a) shall not pay any dues related to the employees' wages;
   b) from the contributions related to the employees' wages, shall only pay the contribution applicable on the basis of social security regulations, which shall not exceed the amount of the monthly health care contribution, i.e. 7 710 HUF.
2. In order to comply with the bans, restrictions provided by the Government regulation No. 40/2020. (III. 11.) during the state of emergency, certain provisions of the Labour Code shall apply in accordance with the below changes for thirty days after the end of state of emergency.
   a) The employer may change the employee's communicated work schedule overnight regardless of the provisions of the communication. – *The amended work schedule shall be communicated by means considered customary, and in writing if requested by the employee(s). The employers shall continue to comply with the provisions regarding the maximum daily work time as well as the minimum rest period, moreover when preparing the work schedule the employers shall take the employees' fundamental needs, and personal as well as family circumstances into account.*
   b) The employer may unilaterally order home office and remote working. – *Unfortunately the Government regulation does not set forth any details on the conditions the employer shall provide, furthermore it is not clear whether the duration of the employment derogating from the employment contract may exceed 44 scheduled working days in case the state of emergency is extended*.
   c) The employer may carry out the necessary and justified measures to check the health status of the employees. – *Please note that certain data protection related restrictions may apply as mentioned above in Part I.*

   Any provisions of a collective agreement that infringes the above (see Section 2.) regulations shall not apply as long as the Government regulation is in force.

   Employee and employer may agree to derogate from the provisions of the Labour Code. – *It is a general provision that leaves a wide authorization, and which will likely be concretized by the referred detailed regulations. However, as long as the aforementioned detailed regulations are not published, according to our understanding, the provision shall only be interpreted as the employer and employee may derogate from each and every provision of the Labour Code in an agreement, i.e. in the employment contract.*

   Until the envisaged legislative measures are not published, please only apply the above authorization carefully, with insight and adequate self-restraint, as it is indisputable that the legislator's intent does not actually cover the exemption from all the employers' obligations (such as the obligations regarding work safety or payment of wages), furthermore the agreement may as well be challenged by the employee, in case the employee was acting under misapprehension, or the employee was persuaded to conclude the agreement by the use of indirect or direct threat.

Currently, the state of emergency ends on 31 March 2020, however, based on the authorization of the Parliament, the Government will likely extend it.

Should you have any questions with regard to the above or any other issues, furthermore in case of any query concerning the drafting of action plans or other documents, please do not hesitate to contact us:

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Last updated: 19 May 2020